

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

DAVID ALLEN RUSSELL

§

v.

§

CIVIL ACTION NO. 6:17cv148

BALDEN POLK, ET AL.

§

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND DENYING MOTION FOR RELIEF FROM JUDGMENT

The Plaintiff David Allen Russell, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

The Magistrate Judge issued a Report recommending that Russell's application for leave to proceed *in forma pauperis* be denied and the lawsuit dismissed because Russell was barred from proceeding *in forma pauperis* under 28 U.S.C. §1915(g). After receiving the Report, Russell filed a motion asking that the lawsuit be dismissed. This motion was granted and the lawsuit was dismissed without prejudice on January 26, 2018.

On October 3, 2018, Russell filed a motion asking that the lawsuit be reopened. The Magistrate Judge properly construed this motion as a motion for relief from judgment under Fed. R. Civ. P. 60(b) and issued a Report recommending that the motion be denied. Russell received a copy of this Report on January 29, 2019, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and

legal conclusions accepted and adopted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law"). It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 26) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the Plaintiff's motion to reopen the case or for relief from judgment (docket no. 25) is **DENIED**.

So **ORDERED** and **SIGNED** March 11, 2019.



Ron Clark, Senior District Judge